

REMARKS/ARGUMENTS

The Claims have been divided into Groups as follows:

Group I:      Claims 1-9, drawn to a method of forming a plasma (Claim 1) and a method of decomposing toxic substances comprising treating the toxic substances with the plasma formed by the method of Claim 1 (Claim 4).

Group II:      Claim 10, drawn to a device for forming a plasma.

Applicants elect, with traverse, Group I, Claims 1-9 [drawn to a method of forming a plasma (Claim 1) and a method of decomposing toxic substances comprising treating the toxic substances with the plasma formed by the method of Claim 1 (Claim 4)], for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I - II do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

“The common technical feature between groups I and II is a chamber containing two electrodes separated by a layer of dielectric material. Said common technical feature is not a special technical feature because it is found in the prior art. WO 02/35895 discloses a chamber having 2 electrodes and the electrodes are separated by an electrically insulating chamber having 2 electrodes and the electrodes are separated by an electrically insulating material (note Figure 7 and page 11, lines 4-6). Thus, the groups do not share a special technical feature and lack unity under PCT Rule 13.2.”

Applicants respectfully submit that the Office has not provided any indication that the contents of the claims *interpreted in light of the description* was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(2) A product and a process of use of said product; . . .”

In addition, The MPEP §806.03 states:

“Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.”

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-II with respect to 37 C.F.R. § 1.475(b)(2) and MPEP §806.03. Therefore the burden necessary according to MPEP § 1893.03(d) to sustain the conclusion that the groups lack of unity of invention has not been met.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction.

Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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